

# Exhibit B

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ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

JUL 02 2014

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7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF LOS ANGELES

3550606

10 FRED JOHNSON,

Case Nos.:

11 Plaintiff,

Hon.

Dept.:

12 vs.

COMPLAINT FOR BREACH OF  
CONTRACT / WARRANTY

14 GENERAL MOTORS, LLC; and DOES 1  
through 10, inclusive,

16 Defendants.

JURY TRIAL DEMANDED

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1875 CENTURY PARK EAST, SUITE 700, LOS ANGELES, CA 90067

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1 Plaintiff alleges as follows:

2 **PARTIES**

3 1. As used in this Complaint, the word "Plaintiff" shall refer to Plaintiff Fred  
4 Johnson.

5 2. Plaintiff is a resident of Los Angeles County, California

6 3. As used in this Complaint, the word "Defendant" shall refer to all Defendants  
7 named in this Complaint.

8 4. Defendant is a Delaware corporation with its headquarters and principal place  
9 of business in the state of Michigan. Defendant does business in the state of California. At all  
10 times relevant herein, Defendant was engaged in the business of designing, manufacturing,  
11 constructing, assembling, marketing, distributing, and selling automobiles and other motor  
12 vehicles and motor vehicle components in Los Angeles County.

13 5. Plaintiff is ignorant of the true names and capacities of the Defendants sued  
14 under the fictitious names DOES 1 to 10. They are sued pursuant to Code of Civil Procedure  
15 section 474. When Plaintiff becomes aware of the true names and capacities of the  
16 Defendants sued as DOES 1 to 10, Plaintiff will amend this Complaint to state their true  
17 names and capacities.

18 **FIRST CAUSE OF ACTION**

19 **BY PLAINTIFF AGAINST DEFENDANT**

20 **VIOLATION OF SUBDIVISION (D) OF CIVIL CODE SECTION 1793.2**

21 6. In or around December of 2007, Plaintiff purchased a 2008 Chevrolet HHR,  
22 vehicle identification number 3GNDA53P38S620566 (hereafter "Vehicle") which was  
23 manufactured and or distributed by Defendant. The total consideration which Plaintiff paid or  
24 agreed to pay, including taxes, license, and loan interest charges was over \$17,000. The  
25 Vehicle was purchased primarily for personal, family, or household purposes. Plaintiff  
26 purchased the Vehicle from a person or entity engaged in the business of manufacturing,  
27 distributing, or selling consumer goods at retail.

28

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1           7. In connection with the purchase, Plaintiff received an express written warranty  
2 in which Defendant undertook to preserve or maintain the utility or performance of the  
3 Vehicle or to provide compensation if there is a failure in utility or performance for a  
4 specified period of time. The warranty provided, in relevant part, that in the event a defect  
5 developed with the Vehicle during the warranty period, Plaintiff could deliver the Vehicle for  
6 repair services to Defendant's representative and the Vehicle would be repaired.

7           8. During the warranty period, the Vehicle contained or developed defects,  
8 including but not limited to, defects relating to the Vehicle's ignition switch, defects relating  
9 to the Vehicle's catalytic converter, defects relating to the Vehicle's suspension system,  
10 defects that cause the Vehicle to leak fluids, and defects relating to the Vehicle's throttle  
11 body.

12           9. Defendant and its representatives in this state have been unable to service or  
13 repair the Vehicle to conform to the applicable express warranties after a reasonable number  
14 of attempts. Despite this fact, Defendant failed to promptly replace the Vehicle or make  
15 restitution to Plaintiff as required by Civil Code section 1793.2, subdivision (d) and Civil  
16 Code section 1793.1, subdivision (a)(2).

17           10. Plaintiff has been damaged by Defendant's failure to comply with its  
18 obligations pursuant to Civil Code section 1793.2, subdivision (d) and Civil Code section  
19 1793.1, subdivision (a)(2), and therefore brings this cause of action pursuant to Civil Code  
20 section 1794.

21           11. Defendant's failure to comply with its obligations under Civil Code section  
22 1793.2, subdivision (d) was willful, in that Defendant and its representative were aware that  
23 they were unable to service or repair the Vehicle to conform to the applicable express  
24 warranties after a reasonable number of repair attempts, yet Defendant failed and refused to  
25 promptly replace the Vehicle or make restitution despite Plaintiff's demand. Accordingly,  
26 Plaintiff is entitled to a civil penalty of two times Plaintiff's actual damages pursuant to Civil  
27 Code section 1794, subdivision (c).

28           12. Defendant does not maintain a qualified third-party dispute resolution process

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1 which substantially complies with Civil Code section 1793.22. Accordingly, Plaintiff is  
2 entitled to a civil penalty of two times Plaintiff's actual damages pursuant to Civil Code  
3 section 1794, subdivision (e).

4 13. Plaintiff seeks civil penalties pursuant to section 1794, subdivisions (c), and (e)  
5 in the alternative and does not seek to cumulate civil penalties, as provided in Civil Code  
6 section 1794, subdivision (f).

7 **SECOND CAUSE OF ACTION**

8 **BY PLAINTIFF AGAINST DEFENDANT**

9 **VIOLATION OF SUBDIVISION (B) OF CIVIL CODE SECTION 1793.2**

10 14. Plaintiff incorporates by reference the allegations contained in paragraphs set  
11 forth above.

12 15. Although Plaintiff delivered the Vehicle to Defendant's representative in this  
13 state, Defendant and its representative failed to commence the service or repairs within a  
14 reasonable time and failed to service or repair the Vehicle so as to conform to the applicable  
15 warranties within 30 days, in violation of Civil Code section 1793.2, subdivision (b). Plaintiff  
16 did not extend the time for completion of repairs beyond the 30-day requirement.

17 16. Plaintiff has been damaged by Defendant's failure to comply with its  
18 obligations pursuant to Civil Code section 1793.2(b), and therefore brings this Cause of  
19 Action pursuant to Civil Code section 1794.

20 17. Plaintiff has rightfully rejected and/or justifiably revoked acceptance of the  
21 Vehicle, and has exercised a right to cancel the sale. By serving this Complaint, Plaintiff does  
22 so again. Accordingly, Plaintiff seeks the remedies provided in California Civil Code section  
23 1794(b)(1), including the entire purchase price. In the alternative, Plaintiff seeks the remedies  
24 set forth in California Civil Code section 1794(b)(2), including the diminution in value of the  
25 Vehicle resulting from its defects. Plaintiff believes that, at the present time, the Vehicle's  
26 value is *de minimis*.

27 18. Defendant's failure to comply with its obligations under Civil Code section  
28 1793.2(b) was willful, in that Defendant and its representative were aware that they were

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1 obligated to service or repair the Vehicle to conform to the applicable express warranties  
2 within 30 days, yet they failed to do so. Accordingly, Plaintiff is entitled to a civil penalty of  
3 two times Plaintiff's actual damages pursuant to Civil Code section 1794(c).

4 **THIRD CAUSE OF ACTION**  
5 **BY PLAINTIFF AGAINST DEFENDANT**  
6 **VIOLATION OF SUBDIVISION (A)(3) OF CIVIL CODE SECTION 1793.2**  
7

8 19. Plaintiff incorporates by reference the allegations contained in paragraphs set  
9 forth above.

10 20. In violation of Civil Code section 1793.2, subdivision (a)(3), Defendant failed  
11 to make available to its authorized service and repair facilities sufficient service literature and  
12 replacement parts to effect repairs during the express warranty period. Plaintiff has been  
13 damaged by Defendant's failure to comply with its obligations pursuant to Civil Code section  
14 1793.2(a)(3), and therefore brings this Cause of Action pursuant to Civil Code section 1794.

15 21. Defendant's failure to comply with its obligations under Civil Code section  
16 1793.2, subdivision (a)(3) was wilful, in that Defendant knew of its obligation to provide  
17 literature and replacement parts sufficient to allow its repair facilities to effect repairs during  
18 the warranty period, yet Defendant failed to take any action to correct its failure to comply  
19 with the law. Accordingly, Plaintiff is entitled to a civil penalty of two times Plaintiff's actual  
20 damages; pursuant to Civil Code section 1794(c).

21 **FOURTH CAUSE OF ACTION**  
22 **BY PLAINTIFF AGAINST DEFENDANT**  
23 **BREACH OF EXPRESS WRITTEN WARRANTY**  
24 **CIV. CODE, § 1791.2, SUBD. (a); § 1794**

25 22. Plaintiff incorporates by reference the allegations contained in paragraphs set  
26 forth above.

27 23. In accordance with Defendant's warranty, Plaintiff delivered the Vehicle to  
28 Defendant's representative in this state to perform warranty repairs. Plaintiff did so within a



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1 reasonable time. Each time Plaintiff delivered the Vehicle, Plaintiff notified Defendant and its  
2 representative of the characteristics of the Defects. However, the representative failed to  
3 repair the Vehicle, breaching the terms of the written warranty on each occasion.

4 24. Plaintiff has been damaged by Defendant's failure to comply with its  
5 obligations under the express warranty, and therefore brings this Cause of Action pursuant to  
6 Civil Code section 1794.

7 25. Defendant's failure to comply with its obligations under the express warranty  
8 was willful, in that Defendant and its authorized representative were aware that they were  
9 obligated to repair the Defects, but they intentionally refused to do so. Accordingly, Plaintiff  
10 is entitled to a civil penalty of two times of Plaintiff's actual damages pursuant to Civil Code  
11 section 1794(c).

12 **FIFTH CAUSE OF ACTION**  
13 **BY PLAINTIFF AGAINST DEFENDANT**  
14 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**  
15 **(CIV. CODE, § 1791.1; § 1794)**

16 26. Plaintiff incorporates by reference the allegations contained in the paragraphs  
17 set forth above.

18 27. Pursuant to Civil Code section 1792, the sale of the Vehicle was accompanied  
19 by Defendant's implied warranty of merchantability. Pursuant to Civil Code section 1791.1,  
20 the duration of the implied warranty is coextensive in duration with the duration of the express  
21 written warranty provided by Defendant, except that the duration is not to exceed one-year.

22 28. Pursuant to Civil Code section 1791.1 (a), the implied warranty of  
23 merchantability means and includes that the Vehicle will comply with each of the following  
24 requirements: (1) The Vehicle will pass without objection in the trade under the contract  
25 description; (2) The Vehicle is fit for the ordinary purposes for which such goods are used; (3)  
26 The Vehicle is adequately contained, packaged, and labelled; (4) The Vehicle will conform to  
27 the promises or affirmations of fact made on the container or label.  
28

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1           29. In or around December of 2007, or within one-year thereafter, the Vehicle  
2 contained or developed the defects set forth above. The existence of each of these defects  
3 constitutes a breach of the implied warranty because the Vehicle (1) does not pass without  
4 objection in the trade under the contract description, (2) is not fit for the ordinary purposes for  
5 which such goods are used, (3) is not adequately contained, packaged, and labelled, and (4)  
6 does not conform to the promises or affirmations of fact made on the container or label.

7           30. Plaintiff has been damaged by Defendant's failure to comply with its  
8 obligations under the implied warranty, and therefore brings this Cause of Action pursuant to  
9 Civil Code section 1794.

10                               **SIXTH CAUSE OF ACTION**

11                               **BY PLAINTIFF AGAINST DEFENDANT**

12                               **VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT**

13           31. Plaintiff incorporates by reference the allegations contained in the paragraphs  
14 set forth above.

15           32. Plaintiff is a "consumer" as defined in the Magnuson-Moss Warranty Act  
16 (referred to as "Mag-Moss"), 15 U.S.C. § 2301(3).

17           33. Defendant is a "supplier" and "warrantor" as defined in the Mag-Moss Act, 15  
18 U.S.C. § 2301(4), 15 U.S.C. § 2301(5).

19           34. The vehicle is a "consumer product" as defined in the Mag-Moss Act, 15  
20 U.S.C. § 2301(1).

21           35. In addition to the express warranty, in connection with the sale of the vehicle to  
22 Plaintiff, an implied warranty of merchantability was created under California law. The  
23 vehicle's implied warranties were not disclaimed using a Buyer's Guide displayed on the  
24 vehicle; thus any purported disclaimers were ineffective pursuant to 15 U.S.C. § 2308(c).

25           36. Defendant violated the Mag-Moss Act when it breached the express warranty  
26 and implied warranties by failing to repair the defects and nonconformities, or to replace the  
27 vehicle.  
28



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1 37. Plaintiff performed all terms, conditions, covenants, promises and obligations  
2 required to be performed on Plaintiff's part under the terms of the purchase agreement, and  
3 express warranty and implied warranty except for those terms and conditions, covenants,  
4 promises and obligations or payments for which performance and/or compliance has been  
5 excused by the acts and/or conduct of the Defendant and/or by operation of law.

6 38. As a direct and proximate result of the acts and omissions of the Defendant,  
7 Plaintiff has been damaged in the form of general, special and actual damages in an amount  
8 within the jurisdiction of this Court, according to proof at trial.

9 39. Under the Act, Plaintiff is entitled to reimbursement of the entire amount paid  
10 or payable.

11 40. Plaintiff is entitled to all incidental, consequential and general damages  
12 resulting from Defendant's failure to comply with their obligations under the Mag-Moss Act.

13 41. Plaintiff is entitled under the Mag-Moss Act to recover as part of the judgment  
14 a sum equal to the aggregate amount of costs and expenses, including attorney's fees,  
15 reasonably incurred in connection with the commencement and prosecution of this action  
16 pursuant to 15 U.S.C. § 2310(d)(2).

17  
18 **PRAYER**

19 **PLAINTIFF PRAYS for judgment against Defendant as follows:**

- 20 a. For Plaintiff's damages in the amount that exceeds \$17,000;  
21 b. For restitution;  
22 c. For a civil penalty in the amount of two times Plaintiff's total damages  
23 pursuant to Civil Code section 1794, subdivision (c) and (e);  
24 d. For any consequential and incidental damages;  
25 e. For costs of the suit and Plaintiff's reasonable attorneys' fees pursuant  
26 to Civil Code section 1794, subdivision (d);  
27 f. For prejudgment interest at the legal rate; and  
28 g. For such other relief as the Court may deem proper.

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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial on all causes of action asserted herein.

Dated: June 30, 2014



By: \_\_\_\_\_  
Joshua Valero  
Attorney for Plaintiff